

### **REMARKS**

Claims 1, 2, 5, 6, 8-14, and 16-23 are pending in the present application. In the Advisory Action mailed November 25, 2005, the Examiner maintained the finality of the rejection of claims 1, 2, 5, 6, 8-14, and 16-23. Responsive thereto, Applicant requests consideration of the Declaration of Thomas L. Toth under 37 C.F.R. §1.132 enclosed herewith and the remarks set forth hereinafter.

Briefly, the Examiner is reminded that a Request for Continued Examination was filed on November 30, 2005 together with an Information Disclosure Statement. In this regard, this Amendment/Response must be considered by the Examiner.

As referenced above, Applicant has enclosed a Declaration of Thomas L. Toth under 37 C.F.R. §1.132. As set forth in the enclosed Declaration, the particulars of claimed invention are not merely a matter of design choice, as suggested by the Examiner. The claimed invention and, in particular, the claimed orientation of the x-ray attenuating filters, results in advantages that were not expected nor suggested by the art of record. Specifically, as set forth in the Amendment/Response filed November 16, 2005, it was found that the acceptance angle of a detector cell saw more filter surface area if the curved portions of the filters faced the detector which resulted in the detector receiving a greater amount of un-attenuated scatter from the surface of the filter. In short, the claimed orientation is more advantageous than the filter orientation disclosed and/or suggested by the art of record.

Moreover, as set forth in the enclosed Declaration, the claimed orientation is not simply a matter of design choice. The Examiner's conclusion is predicated upon the belief that one skilled in the art would have been motivated to modify the teachings of the references to reach the claimed invention simply as a matter of space-savings design. In this regard, it follows that one skilled in the art would have expected the same results with the claimed invention as those expected with the filters disclosed by the art of record. That is not the case. Applicant found that the claimed orientation provided advantages beyond those taught and/or suggested by the art of record. Evidence thereof is set forth in the enclosed Declaration.

Regarding the rejection of claim 17, Applicant disagrees that the combination of Popescu, Toth et al., and Moore suggests the claimed invention. As set forth previously, Moore teaches away from the combination. The Examiner has asserted that Moore has only been relied upon for its teaching of "motors for filters"; however, it is well-established that "a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the

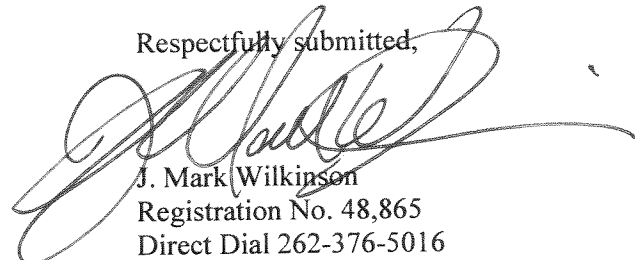
claimed invention.” MPEP §2141.02, VI citing *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721, F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). As such, the Examiner must consider Moore in its entirety, not simply for its teaching of filter motors. In this regard, if Moore, as a whole, teaches away from a combination with a reference, one skilled in the art would not be motivated to form the combination notwithstanding that a particular portion of the disclosure may be combinable. Therefore, as Moore teaches that, at a minimum, its filter wedges overlap one another, a skilled artisan would conclude that it would be unnecessary to have a stationary filter, as called for in claim 17. Accordingly, it is believed that the art of record, *when considered in its entirety*, fails to teach or suggest the invention called for in claim 17.

In sum, while Applicant believes that the Examiner has not established a prima facie case for obviousness as set forth in the Amendment/Response filed November 16, 2005, the enclosed Declaration rebuts such a prima facie case with evidence of secondary considerations that further define the patentability of the claimed invention. Moreover, as set forth herein, the art of record teaches away from the combination formed by the Examiner.

Therefore, in light of at least the foregoing and the enclosure, Applicant believes that the pending claims define the claimed invention over the art of record and, as such, requests a allowance of claims 1, 2, 5, 6, 8-14, and 16-23.

Applicant appreciates the Examiner’s consideration of these Remarks and cordially invites the Examiner to call the undersigned, should the Examiner consider any matters unresolved.

Respectfully submitted,



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